IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 17215 of 2005(Y)

OS.732/1996 of PRL.SUB COURT,THRISSUR
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PETITIONER:

RAVINDRANATHAN, S/O. KANJAVALAPPIL
PASRANGODAN, PARLIKKAD VILLAGE & DESOM,
TALAPPILLY TALUK.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENTS:
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1. VALSALA AMMA, D/O. PARENGATTIL KOCHU @
JANAKI AMMA, PARLIKKAD VILLAGE & DESOM,
TALAPPILLY TALUK.

2. MOHANAN, S/O. CHEMBRAMGOTIL KOCHUNNI
PARLIKKAD VILLAGE & DESOM, TALAPPILLY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 17215 of 2005 APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of Partition Deed No. 3377 of 2001 dated 7/6/2001 of Sub-Registrar Office, Talappilly

Ext.P2: True copy of the impleading petition I.A. 121 of 2005 in O.S. No. 732/1996 dated 6/1/2005 filed before the Hon'ble Sub court, Thrissur

Ext.P3: True copy of the counter to I.A 121 of 2005 in OS No. 732/1996 of Feb 05 filed before the Hon'ble Subcourt, Thrissur

Ext.P4: The true copy of the order in I.A. No. 121 of 2005 in O.S. No. 732/1996 dated 14/3/2005 on the files of Hon'ble Subcourt, Thrissur

//True copy//

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PIUS C. KURIAKOSE, J.

W.P.(C) NO. 17215 of 2005

Dated this the 2nd day of August , 2007

JUDGMENT

An application under Order 1 Rule 10(2) of CPC filed by the defendants for impleadment of two additional defendants in the suit on the reason that on the strength of partition effected subsequent to the filing of the suit, the additional defendants have come to have interest in the suit property, was dismissed by the learned Munsiff. Ext.P4 is that order which is under challenge. The plaintiffs /respondents despite service of notice by this court has not entered appearance before this court. The contention of the respondents was that the prospective additional defendants are not necessary parties and that they have not acquired any interest in the suit property. The learned Munsiff noticed that the present petitioner had not raised contention in the written statement that the suit is bad for non joinder of necessary parties. Taking the view that the plaintiff is the dominus litus the learned Munsiff decided that it was not possible to allow the impleadment of additional parties on application submitted by the defendant who had not even contended that the suit is bad for non joinder of necessary parties. Sri.Dinesh Mathew

J.Murikan, the learned counsel for the petitioner would rely on the judgments of this court in **Skaria Joseph v. Eliyamma Joseph (1996 (2) KLT 295) and in Girijadevi v. Hormis Thaliath (1983 KLT 732)** to contend that the court has an obligation to implead all necessary parties and also proper parties.

I do not think that the learned Munsiff can be blamed in this case where the plaintiffs who are the master of the litigation submits that the prospective additional defendants are not necessary parties and that they are not desirous of any decree against them. I sustain the impugned order observing however that the decree to be passed shall not bind the prospective defendants whom the petitioner wanted to implead. If the petitioner is having any genuine cause of action against the prospective additional defendants, confirmation of Ext.P3 by this court will not stand in the way of the petitioner instituting suit against them upon such cause of action.

PIUS C. KURIAKOSE,

JUDGE.

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